

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FILED  
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CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY DMJ  
DEPUTY CLERK

ADMIRAL INSURANCE  
COMPANY,

PLAINTIFF,

V.

K&K ROOFING AND  
CONSTRUCTION LLC,

DEFENDANT.

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CASE NO. 1:20-CV-399-LY

**ORDER ON REPORT AND RECOMMENDATION**

Before the court in the above-styled and numbered cause of action are Admiral Insurance Company's Motion for Summary Judgment and Alternative Motion for Partial Summary Judgment, filed January 6, 2021 (Dkt. 20); K&K Roofing and Construction LLC's Motion to Dismiss for Lack of Subject Matter Jurisdiction, filed January 28, 2021 (Dkt. 28); Admiral Insurance Company's Response to K&K's Motion to Dismiss, filed February 8, 2021 (Dkt. 29); and K&K's Reply to Admiral's Response, filed February 12, 2021 (Dkt. 31). The motions and responses were referred to the United States Magistrate Judge for a Report and Recommendation as to the merits pursuant to 28 U.S.C. § 636(b), Rule 72 of the Federal Rules of Civil Procedure, and Rule 1(d) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas.

The magistrate judge filed a Report and Recommendation on May 20, 2021 (Dkt. 32), recommending the court grant K&K's motion to dismiss for lack of subject-matter jurisdiction and dismiss the suit without prejudice under Federal Rule of Civil Procedure 12(b)(1). The magistrate judge further recommends that Admiral's motion for summary judgment and alternative motion for partial summary judgment be dismissed.

A party may serve and file specific written objections to the proposed findings and recommendations of a magistrate judge within 14 days after being served with a copy of the report and recommendation and thereby secure *de novo* review by the district court. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b). A party's failure to timely file written objections to the proposed findings, conclusions, and recommendation in a report and recommendation bars that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. *See Douglass v. United Services Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (en banc).

The parties in this cause were properly notified of the consequences of a failure to file objections. Objections to the report and recommendation were due on June 3, 2021. As of the date of this order, no party has filed objections to the findings of fact and conclusions of law in the report and recommendation. The court, having reviewed the entire record and finding no plain error, accepts and adopts the report and recommendation of the magistrate judge for substantially the reasons stated therein.

**IT IS THEREFORE ORDERED** that the Report and Recommendation of the United States Magistrate Judge (Dkt. 32) is **ACCEPTED AND ADOPTED** by the court.

**IT IS FURTHER ORDERED** that K&K's Motion to Dismiss (Dkt. 28) is **GRANTED**. This suit is **DISMISSED WITHOUT PREJUDICE** under Federal Rule of Civil Procedure 12(b)(1).

**IT IS FINALLY ORDERED** that Admiral's Motion for Summary Judgment and Alternative Motion for Partial Summary Judgment (Dkt. 20) is **DISMISSED**.

A Final Judgment shall be filed subsequently.

SIGNED this 21<sup>st</sup> day of June, 2021.

  
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LEE YEAKEL  
UNITED STATES DISTRICT JUDGE